In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-516

PAUL K. STEWART, PETITIONER

v.

PETER N. KYROS, WILLIAM S. COHEN, AND CARL ALBERT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

Petitioner brought this action in the United States District Court for the District of Maine to enjoin Peter N. Kyros and William S. Cohen, members of the United States House of Representatives, and Carl Albert, Speaker of the House of Representatives, from taking any action with regard to the impeachment of former President Richard M. Nixon. He also sought declaratory relief, claiming that the constitutional definition of an impeachable offense is impermissibly vague and that the impeachment articles of the United States Constitution are obsolete. The district court dismissed the complaint (Pet. App., pp. 18-19) and the court of appeals affirmed (Pet. App. pp. 20-21).

The court of appeals correctly refused adjudication of the merits of petitioner's claim for reasons of standing, abstention, ripeness, and the political question aspect of justiciability. Moreover, since the entry of the judgment of the court of appeals on June 6, 1974, former President Nixon has resigned the presidency and the impeachment proceedings petitioner seeks to enjoin have been terminated.[1] Accordingly, petitioner's action is now moot.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

DECEMBER 1974.

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[1]Petitioner now requests that former President Nixon be reinstated as President. There is of course no constitutional basis for reinstatement of a former President who has voluntarily resigned from office, but this issue cannot in any event be presented to this Court, as petitioner apparently seeks to do, essentially in the form of a newly amended complaint. See, *e.g.*, *Lawn* v. *United States*, 355 U.S. 339.

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